

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

CSX TRANSPORTATION, INC.,  
individually and on behalf of NORFOLK  
& PORTSMOUTH BELT LINE  
RAILROAD COMPANY,

Plaintiff,

v.

Civil Action No. 2:18-cv-530-MSD-LRL

NORFOLK SOUTHERN RAILWAY  
COMPANY, *et al.*,

Defendants.

\_\_\_\_\_ /

**CSX TRANSPORTATION, INC.’S RESPONSE TO DEFENDANTS  
JERRY HALL, THOMAS HURLBUT AND PHILLIP MERILLI’S  
MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(1) FOR MOOTNESS**

NOW COMES Plaintiff CSX Transportation, Inc. (“CSXT”), by counsel, and responds to the motion made by Defendants Jerry Hall, Thomas Hurlbut, and Philip Merilli (the “Individual Defendants”), pursuant to Fed. R. Civ. P. 12(b)(1), to dismiss the claims against them for lack of subject matter jurisdiction. ECF 119. The Individual Defendants were named in the Complaint in their capacity as voting members of the Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) Board of Directors. *See* Compl. at ¶ 10. Since CSXT filed the Complaint in October 2018, all the Individual Defendants have resigned from the Board. Because CSXT seeks only injunctive relief compelling the Individual Defendants to take certain actions in their capacities as members of the NPBL Board, the Individual Defendants claim the case against them is moot and they should be dismissed under Fed. R. Civ. P. 12(b)(1).

CSXT is presently discussing with Defendants Norfolk Southern Railway Company (“NS”), Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”), Hall, Hurlbut, Merilli, and Cannon Moss, jointly moving the Court pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), to dismiss Defendants Hall, Hurlbut, and Merilli from this action, without prejudice. These discussions also contemplate a stipulation by CSXT, NS, and NPBL that any final award of injunctive relief against NPBL will be followed and undertaken by the present NPBL Board of Directors. Counsel for the Individual Defendants, as well as Cannon Moss, have agreed to such a joint motion and stipulation. Should an agreement be reached with NS and NPBL, an appropriate motion and proposed order will be presented to the Court.

In light of these ongoing discussions and the arguments made by the Individual Defendants, CSXT does not oppose Defendants Jerry Hall, Thomas Hurlbut, and Philip Merilli’s Motion, made pursuant to Fed. R. Civ. P. 12(b)(1), to dismiss the claims against them.

Dated: February 20, 2020

Respectfully submitted,

**CSX TRANSPORTATION, INC.**

*By Counsel*

/s/ Robert W. McFarland

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**CERTIFICATE OF SERVICE**

I certify that on this 20th day of February 2020, a true and correct copy of the foregoing was served on all counsel of record via Notice of Electronic Filing by filing with the Court's CM/ECF system.

/s/ Robert W. McFarland

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